

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's  
Own Motion to Establish Consumer Rights and  
Consumer Protection Rules Applicable to All  
Telecommunications Utilities.

Rulemaking 00-02-004

(Filed February 3, 2000)

**ASSIGNED COMMISSIONER'S RULING**

Decision (D.) 04-05-057 was adopted on May 27, 2004. I have determined that a matter is appropriate for modification in that decision. Attached is a draft opinion that would modify D.04-05-057 on the Commission's own motion.

Pursuant to Section 1708 of the Public Utilities Code, this draft is being sent out for party comment in advance of it being submitted to the Commission. In this instance, however, Rule 77.7(f)(9) of the Rules of Practice and Procedure permits the Commission to reduce the comment period for reasons of public necessity. Customers and carriers alike would be harmed if the normal comment period ensues; because of the great complexity of the required steps, carriers continue not to be able to meet our implementation schedule for D.04-05-057. That process involves testing, for example, billing information systems, which may fail and consequently damage customers. Thus, parties desiring to comment on this modification proposal shall file and serve comments by Tuesday, January 11, 2005, 5 days from this ruling. There will be no reply comments.

Following the receipt of comments I anticipate placing an opinion before my colleagues at the next regularly scheduled Commission meeting addressing the proposed modification. Unless the opinion put forward differs significantly

from that which is being sent out today for comment, it will not be put out for comment again as a proposed agenda item. Therefore, parties should comment on the attached draft on the premise that this may be the only comment opportunity they will have as to the modifications proposed.

Therefore, **IT IS RULED** that:

1. Pursuant to Public Utilities Code Section 1708, I propose to put before the Commission a decision modifying Decision 04-05-057, which is attached to this ruling.

2. Processes required to test the adequacy of changes we have imposed on carriers may provoke failures of systems that support critical services to customers, including billing and provisioning telephone service. This condition constitutes a public necessity to reduce the normal comment period.

3. The draft will be put out for shortened five-day comment prior to being placed on a regularly scheduled Commission meeting agenda, based on Rule 77.7(f)(9) of the Rules of Practice and Procedure which permits the Commission to reduce the comment period for reasons of public necessity.

Dated January 5, 2005, at San Francisco.

/s/ Susan P. Kennedy

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Susan P. Kennedy  
Assigned Commissioner

## ATTACHMENT A

Decision \_\_\_\_\_

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### OPINION MODIFYING DECISION 04-05-057

The Commission adopted Decision (D.) 04-05-057 on May 27, 2004, initiating a broad set of consumer rights and consumer protection rules for service provided by California's telecommunications carriers. Today we address the difficulties we have imposed on the carriers in implementing the decision. In order to alleviate the problems we have imposed on carriers, we stay the effect of the Decision. Subsequently we may consider further steps that may be required to address the matters discussed below in a more permanent fashion.

#### **Carriers are Experiencing Significant Difficulties in Implementing the Decision**

Beginning last fall, a total of 50 letters have been received from 45 carriers requesting extended time to comply with various Rules and subparts since adoption of G.O. 168 on May 27, 2004. By the authority extended to him in Rule 48(b) of the Commission Rules of Practice and Procedure, the Executive Director has granted 21 requests for extensions thus far, some that will be effective until January 2006. The Executive Director previously granted a 30-day extension from December 6, 2004 to January 5, 2005 and renewed it to February 4, 2005 for

certain carriers, in order to allow staff to analyze carefully and thoroughly each of these requests. On January 4, 2005, the Executive Director gave these carriers an additional extension of time to April 4, 2005. That letter is appended to this order as Attachment B.

The volume of extension requests indicates that many carriers are not able to comply with all subparts of the Rules within the required 180 days as specified by G.O. 168. Over twenty carriers state that they will be unable to comply with specific Rules within the two successive 30-day extensions of time already granted. These carriers are requesting many more months to comply with 26 specific subparts of the Rules.

### **Substantial Changes to Complex Information Systems Are Underway**

The carriers are requesting this added time to make substantial and complex changes to carrier billing systems, computer systems or contracts for vendor services where the carrier has limited control over the implementation schedule. Most carriers' billing systems are national; consequently, carriers indicate that the modifications needed to enable California-specific systems for billing, interest rates, bill format, receipts, contracts, confirmation and disconnection notices normally take twelve to eighteen months to plan, develop specifications, write code, test for accuracy and maintain quality assurance.

### **Carriers Are Merging With or Acquiring Other Carriers**

Some carriers face the additional complexity of system integration due to merger with or acquisition of other companies. Changes to billing and computer systems that are already in progress as a result of planned mergers makes the implementation schedule in D.04-05-057 more difficult to achieve. Other, smaller carriers have indicated that they lack scale economies to implement the billing or

computer changes cost-effectively. Some have indicated that they may be forced to leave the California market, if they are not granted a lengthy extension or permanent waiver of certain provisions of the Rules.

In particular, two carriers have filed motions seeking waivers that would exempt them from compliance with various provisions of the Rules they contend are particularly burdensome for them. A third carrier has stated that it intends to seek a waiver of another rule, and has indicated that it may withdraw from the California market if its forthcoming waiver request is not granted. While the Executive Director does not have the authority to waive any provision of G.O. 168, or to exempt any carrier from compliance with the Rules, we have that authority, and may grant it in the course of addressing the complexities we have imposed on carriers working to implement G.O. 168.

### **Carriers Have Initiated Litigation to Challenge the Rules**

Carriers have also instituted litigation challenging the Rules. Although we rejected the carriers' legal challenges in D.04-10-013, and denied their Applications for Rehearing, recent actions by the Eighth Circuit Court of Appeals and statements by the FCC may warrant further consideration by the Commission. In particular, in connection with a federal court challenge to a Minnesota statute that imposes limits on contractual changes similar to those found in Rule 8(b), the FCC recently filed an *amicus* brief stating the FCC's position that such limitations constitute impermissible state regulation of wireless rates and are preempted under federal law. Three pending requests for extension under Rule 48(b) relate to the implementation of Rule 8(b).

### **The Commission Must Act to Alleviate This Harm**

It is clear from the volume and nature of the extension requests that compliance with key provisions of G.O. 168 related to billing and computer

systems will be greatly uneven among carriers, and there is significant risk of consumer harm, if major changes are made to billing systems without adequate time for testing.

The volume of extension requests, the requests for waivers, and the recent legal developments raise broad applicability and policy issues. We elect to consider a broader re-examination of policy issues in D.04-05-057 based on the Rule 48(b) requests as we contemplated then:

“We are also concerned that the Rule 48 exemptions could result in great variation in applicability of rules among carriers. If several carriers request an extension of time to implement the same rule, the Commission shall consider consolidating and treating these extension requests as a petition to modify this decision, and require a Commission vote before the requests may be approved in full or in part.”

All of the indicators we now find on our doorstep point directly to the issues we identified earlier as matters of potential concern in the Decision, and now it is time to begin the review.

In order to alleviate the problems we have imposed on carriers, we stay the effect of the Decision. Subsequently we may consider those further steps that may be required to address these matters in a more permanent fashion.

### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and James C. McVicar is the assigned Administrative Law Judge in this proceeding.

### **Comments on Proposed Decision**

The proposed decision of \_\_\_\_\_ in this matter was not mailed to the parties for comment in accordance with Section 311(d) of the Public Utilities Code; instead, we rely on Rule 77.7(f)(9) of the Rules of Practice and Procedure,

which permits the Commission to reduce the comment period for reasons of public necessity.

### **Finding of Fact**

1. Many carriers continue to experience significant difficulties in implementing G.O. 168.
2. These carriers are making changes to complex, nationwide information systems for the benefit of consumers in California.
3. These problems are exacerbated for carriers that are acquiring or merging with other carriers.
4. Some carriers have requested waivers and exemptions from the rules; if not granted, these carriers state they may leave the California market.
5. Other Carriers have initiated litigation in federal and state court to challenge the rules.
6. Processes required to test the adequacy of changes we have imposed on carriers may provoke failures of systems that support critical services to customers, including billing and provisioning of telephone service. This condition constitutes a public necessity to reduce the normal comment period.

### **Conclusion of Law**

1. The decision should be stayed to prevent harm to carriers and consumers.

### **O R D E R**

**IT IS ORDERED** that Decision 04-05-057 is stayed until further action by this Commission.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

(End of Attachment A)

## **ATTACHMENT B**



**CERTIFICATE OF SERVICE**

I certify that I have served by electronic mail this day (and served by mail on January 6, 2005) a true copy of the original attached Assigned Commissioner's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated January 5, 2005, at San Francisco, California.

/s/ Ross LaJeunesse  
Ross LaJeunesse

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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